

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

VICTOR LAMAR O'NEAL,

Plaintiff

VS.

MATT INGRAM,  
RONNIE E. SMITH, and  
SANDRA THURSTON,

Defendants

NO. 5:08-CV-76 (HL)

**PROCEEDINGS UNDER 42 U.S.C. §1983  
BEFORE THE U. S. MAGISTRATE JUDGE**

<b>ORDER AND RECOMMENDATION</b>
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On September 8, 2008, the defendants filed a MOTION TO COMPEL OR FOR AN ORDER TO SHOW CAUSE. Tab #26. Therein, the defendants complained of plaintiff ONEAL's repeated failure to participate in discovery. As such, the defendants requested that the court issue an order to compel or, in the alternative, an order requiring plaintiff O'NEAL to show cause as to why the action should not be dismissed. Thereafter, on September 10, 2008, the undersigned issued an order requiring plaintiff O'NEAL to file a response to the defendants' request. Tab #30. Following this order, plaintiff O'NEAL sent two letters to the court. Tab #31 and Tab #32. Neither letter contained a substantive response to the defendants' motion.

During this same time frame, the district judge assigned to this case adopted the undersigned's recommendation (Tab #28) to grant in part and deny in part a motion seeking dismissal which had been previously filed by the defendants (Tab #18). Tab #35. A copy of this order was sent to the plaintiff at his last known address on October 22, 2008. Thereafter, on October 24, 2008, the plaintiff was mailed an Election Form pursuant to 28 U.S.C. 636(c)(1). Tab #37. Both the order and the election form have been returned to the court as undeliverable. Tab #38 and Tab #39.

In light of the plaintiff's failure to respond as directed by the undersigned's order of September 10, 2008, coupled with the plaintiff's failure to comply with the undersigned's order of April 9, 2008 wherein he was advised of his duty to diligently prosecute the action and keep the court and opposing parties advised of current address, the undersigned **RECOMMENDS** that this action be **DISMISSED *with prejudice***.<sup>1</sup>

Pursuant to 28 U.S.C. §636(b)(1), the parties may serve and file written objections to this **RECOMMENDATION** with the district judge to whom this case is assigned **WITHIN TEN (10) DAYS** after being served with a copy thereof.

In light of the foregoing recommendation, defendants' motion seeking an order to compel or order to show cause (Tan #26) is **DENIED** as moot.

The Clerk is directed to serve the plaintiff with a copy of this Order and Recommendation by mailing the same to him at the **LAST ADDRESS** provided by him.

SO ORDERED AND RECOMMENDED, this 21<sup>st</sup> day of MAY, 2009.



A handwritten signature in black ink, which appears to read "Claude W. Hicks, Jr.".

CLAUDE W. HICKS, JR.  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup>In the court's order of April 9, 2008, the parties were advised as follows: *"During the pendency of this action, each party shall at all times keep the Clerk of this court and all opposing attorneys and/or parties advised of his current address. FAILURE TO PROMPTLY ADVISE THE CLERK OF ANY CHANGE OF ADDRESS MAY RESULT IN THE DISMISSAL OF A PARTY'S PLEADINGS FILED HEREIN! Plaintiff is advised that he must diligently prosecute his complaint or face the possibility that it will be dismissed under Rule 41(b) of the FEDERAL RULES OF CIVIL PROCEDURE for failure to prosecute. Defendants are advised that they are expected to diligently defend all allegations made against them and to file timely dispositive motions as hereinafter directed. This matter will be set down for trial when the court determines that discovery has been completed and that all motions have been disposed of or the time for filing dispositive motions has passed."*